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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/636,081	08/06/2003	Pramod K. Gupta	24866A	9824

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WEYERHAEUSER COMPANY
INTELLECTUAL PROPERTY DEPT., CH 1J27
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EXAMINER

PARA, ANNETTE H

ART UNIT	PAPER NUMBER
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1661

NOTIFICATION DATE	DELIVERY MODE
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06/12/2007

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@weyerhaeuser.com

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 10/636,081	Applicant(s) GUPTA ET AL.	
	Examiner Annette H. Para	Art Unit 1661	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 May 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

Response to Applicant's arguments

Applicants argue that Pullman et al. do not anticipate the claimed invention as amended. Applicants argue that Pullman et al. do not teach a method comprising the steps of culturing embryos in maintenance medium to multiply the embryos then cultivating the pre-cotyledonary conifer cells from the maintenance medium for a period at least 0.5 week in or on a synchronisation medium that comprises an absorbent composition and at least one synchronisation agent selected from the group consisting of ABA and/or Gibberellic acid. This is not found persuasive because Pullman et al. teach column 22, Table 9, media 1 and 2 initial medium then transfer to a medium comprising ABA and charcoal (medium 1) or comprising ABA, GA and charcoal (medium 2). Applicants are incorrect in asserting that Pullman et al. do not teach the two steps claimed. A reference which is silent about a claimed invention's feature is inherently anticipatory if the missing feature is necessarily present in that which is described in the reference. In re Oelrich, 212 USPQ 323 (CCPA 1981). Pullman et al. teach culturing embryos in the maintenance medium and then transferring pre-cotyledonary cells in or on a synchronization medium (column 22, Table 9). Similar methods are presumed to inherently possess the same priorities.

Applicants argue that the examiner has failed to establish a prima facie case of obviousness because Pullman et al. fails to disclose or suggest all the claimed elements of the claimed invention. Moreover Pullman et al. fail to teach a method for producing a synchronized population of Loblolly pine embryos.

In response to applicant's arguments, the recitation "produce a synchronized population of conifer somatic embryos" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See In re Hirao, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and Kropa v. Robie, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). Pullman et al. teach that when the method for producing conifer somatic embryos is used to reproduce loblolly pine tree the osmotic level should be at least 200 mM/kg and preferably 240 mM/kg or even higher (column 7, lines 59-61). Moreover, Pullman et al. teach that these adjustments are considered to be within the routine experimental capability of those skilled in the art of tissue culture (column 13, lines 3-10). These teachings suggest all the claim elements of the claimed invention (see above explanation).



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PRIMARY EXAMINER